REMARKS/ARGUMENTS

Claims 1 though 8 were pending in the application. Claim 7 has been canceled by this Amendment. New claim 9 has been added by this Amendment. Claims 1 through 6, 8 and 9 are currently pending in the application. No new matter has been added.

This Amendment is being filed concurrently with a Request for Continued Examination (RCE).

New claim 9 has support in the disclosure at page 2, lines 14 – 17.

Claim 1 has been amended as suggested by the Examiner to address the objections for claim informalities. Applicant thanks the Examiner for the clarification. In light of the amendment, Applicant respectfully requests withdrawal of the objections for claim informalities to claim 1.

Claims 1 through 8 are rejected in the Action under 35 U.S.C. §112, 1st paragraph, as failing to comply with the written description requirement. Specifically, claim 1 was rejected as introducing new matter, and claims 2 – 8 were rejected as dependent upon a rejected base claim.

Applicant respectfully disagrees with the Office Action that new subject matter was been added to claim 1. On page 2, lines 16 – 17, of the original application, a

preferred embodiment of the present invention is disclosed where the joint is "preferably attached to the barycentre of the footrest 11." That is, the joint is located in a position which is "coincident with" the barycentre of the footrest. Moreover, the application further discloses, and illustrates, an embodiment where the footrest is hollow, contains a mobile mass that can be liquid and/or a collection of small particles, where the joint would be attached to the footrest in a position that is higher than the barycentre of the footrest, depending on the material placed inside the hollow footrest (page 3, lines 1 – 12, and particularly Figure 3). Therefore, the original application described (and illustrated) embodiments where the joint would be "coincident with," or "higher than," the barycentre of the footrests, and the previous amendment to claim 1 ("...having said joints located in a position which is coincident or higher than the barycentre of said footrests") did not add new subject matter to the original disclosure. Accordingly, Applicant requests that the rejection to claim 1 made under 35 U.S.C. §112, 1st paragraph (written description), be reconsidered and withdrawn.

For at least the same reasons as provided for independent claim 1, Applicant requests reconsideration and withdrawal of the rejections under 35 U.S.C. §112, 1st paragraph, to dependent claims 2 – 6 and 8. Claim 7 has been deleted by this amendment, mooting the §112, 1st paragraph rejection thereto.

Claim 7 was rejected under 35 U.S.C. §112, 2nd paragraph. Claim 7 has been deleted by this Amendment, also mooting the §112, 2nd paragraph rejection to claim 7.

Claims 1 through 8 are rejected under 35 U.S.C. §103(a) as obvious over French Patent No. FR 2 510 895 to Daninos (hereinafter, "Daninos"), in view of U.S. Patent No. 6,019,712 to Duncan (hereinafter, "Duncan").

Claim 1 recites, in part, "A footstool device comprising at least one footrest... wherein said at least one **footrest comprises a solid bowl shaped body with an internal cavity** containing a mobile mass inside said cavity having said **joints located** in a position which is **coincident with** or **higher than** the barycentre of said footrests." [emphasis added].

Daninos discloses a device to improve a user's balance or equilibrium. However, as shown in Figures 2 – 7, Daninos's training device is configured so that its pivoting means (see Figures 2 through 5), or its ball-and-socket joint (as in Figure 7), on which the footrest platform can tilt, are always located in a *lower* position with respect to the barycentre of the equilibrium device. The instability resulting from this configuration provides the user with the desired balance or equilibrium training, when used, for example, as shown in Fig. 1.

The secondary reference, Duncan, discloses a balance board (i.e., circular rigid platform **1**) that has a hemisphere (pivoting means **5**) which is attached to its lower surface (Figures 1 – 4). The board is free to tilt over the hemisphere when the user places his or her weight upon the board, as shown in Figure 2. A grooved track around the periphery of the board, on which a ball travels, provides resistance to the tilting of the

platform (Figure 1). However, since the hemisphere in Duncan is always located *under* the board, the point of contact between the ground and the hemisphere itself will always be *lower* than the barycentre of the device.

Thus, Daninos, taken alone or in combination with Duncan, fails to disclose, or even suggest, a configuration where the joints to which the footrest(s) are attached are located in a position **coincident with** or **higher than** the **barycentre of the footrests**, as recited in the present claim 1. Nor is there any suggestion in Daninos, or Duncan, of a reason why the person of skill in the art would have been motivated to modify the device so that the pivot point (joint) would be located at a position that is coincident with, or higher than, the barycentre of the footrest. The configuration recited in the present claim 1 provides a smooth, pendulum-type motion that causes the user's feet to move in any spatial direction permitted by the joints, stimulating muscle tone and improving blood circulation in the lower limbs even when the user is seated and/or passively using its movement. Daninos and Duncan, by contrast, are intentionally configured with barycentres of the footrests always located *above* the pivot means, providing an unstable platform that requires the user's involvement to stay upright and its function for equilibrium training or proprioception training. To modify Daninos and/or Duncan so as to teach or suggest all of the claimed limitations of claim 1 would require a change in the operating principle of each device. Further, the change in shape between the devices in Daninos and Duncan and the device recited in claim 1 is not merely an aesthetic choice or design consideration, but rather confers a different dynamic behavior of the device, and a corresponding different purpose, as compared with the devices disclosed or suggested in

the cited art. For these reasons, absent hindsight, it would not have been obvious for a person of skill in the art to modify Daninos and/or Duncan so dramatically as to change their operation and function, with a reasonable prospect of success. Accordingly, Applicant respectfully submits that claim 1 is not obvious over Daninos, taken alone or in combination with Duncan.

Likewise, for at least the same reasons as provided for independent claim 1, dependent claims 2 through 6 and 8 would not be obvious over Daninos, taken alone or in combination with Duncan.

As noted in the response to the previous Office Action, Applicant respectfully continues to traverse the rejection of claim 8 that is based upon Official Notice that there are other exercise devices having non-slip rubber pads, and thus it would have been obvious to have such non-slip pads placed under certain embodiments, namely those Figures 6 and 7, while "not mak[ing] sense" for another embodiment, namely Figure 1. Daninos never discloses or suggests using non-slip rubber pads in his description or drawings, and Figure 1 appears to teach away from this (showing a person using Daninos's device who is able to move the entire device freely about the surface of the floor as needed). For this reason, Applicant respectfully requests reconsideration and withdrawal of the Official Notice and this additional basis for the rejection to claim 8 under §103(a).

New claim 9 recites, "The footstool device according to claim 1, wherein said joint has a suitable size so that said footrest **moves in all spatial directions without touching the base or the ground**." [emphasis added]. This has support in the original disclosure at page 2, lines 14 – 17. Claim 9 is clearly different than Daninos, where the dimension of the footrest is designed so that the bottom edge of the footrest touches the ground when the user is unable to balance or the device is at rest. This is illustrated in Daninos most vividly in Figure 2, but also in Figures 1 and 3 – 7. Likewise, the illustration of the device in Duncan also clearly illustrates a design where the bottom edge of the "circular rigid platform" **1** balanced on pivoting means **5** will touch the floor depending on the size of the pivoting means and the user's ankle movement (see Figure 2; see also col. 3, lines 36 – 42). Thus, new dependent claim 9 is patentable over Daninos and/or Duncan, taken alone or in combination.

Accordingly, Applicant submits that the above amendments and arguments overcome the rejections and objections to claims 1 through 6 and 8 brought under §103(a) and §112, and respectfully requests reconsideration and withdrawal of all rejections and objections thereto. In addition, Applicant has provided the reasons why new claim 9 is patentable over the cited art. Therefore, Applicant respectfully solicits passage of claims 1 – 6, 8, and 9 to allowance.

Respectfully submitted,

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